

191—48.8(508E) Examination or investigations.**48.8(1) Authority, scope and scheduling of examinations.**

a. The commissioner may conduct an examination of a viatical settlement provider or viatical settlement broker as often as the commissioner deems appropriate.

b. For purposes of completing an examination under this chapter, the commissioner may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the viatical settlement provider or viatical settlement broker.

c. The commissioner may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.

d. In lieu of an examination of any foreign or alien viatical settlement provider or viatical settlement broker licensed in this state, the commissioner may, at the commissioner's discretion, accept an examination report on the viatical settlement provider or viatical settlement broker as prepared by the commissioner for the viatical settlement provider's or viatical settlement broker's state of domicile or port-of-entry state.

e. The provisions of Iowa Code chapter 507 shall apply to viatical settlement providers and viatical settlement brokers. The commissioner shall examine the affairs, transactions, accounts, records and assets of each viatical settlement provider as often as the commissioner deems advisable. The expense of such examination shall be assessed against the viatical settlement provider in the same manner as insurers are assessed for examinations.

f. Neither the commissioner nor any person that received the documents, material or other information while acting under the authority of the commissioner, including the NAIC and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials or information subject to this subrule.

48.8(2) Record retention requirements.

a. Executed documents. A person required to be licensed by these rules shall retain copies of all of the following records until the earlier of five years after the death of the viator or until completion of an examination following the death of the viator:

(1) Executed viatical settlement contracts, viatical settlement investment contracts, underwriting documents, policy forms, and applications from the date of the execution of the viatical settlement contract or viatical settlement investment contract, whichever is later; and

(2) All checks, drafts or other evidence and documentation related to the payment, transfer, deposit or release of viatical settlement contract funds from the date of the transaction; and

(3) All other records and documents related to the requirements of this rule.

b. Unexecuted documents. A person required to be licensed by these rules shall retain copies of all of the following records for one year: viatical settlement contracts, viatical settlement investment contracts, underwriting documents, policy forms, and applications that were proposed but not accepted by a potential viator, from the date of the proposed viatical settlement contract or viatical settlement investment contract, whichever is later.

c. This subrule does not relieve a person of the obligation to produce these documents to the commissioner after the retention period has expired if the person has retained the documents.

d. Records required to be retained by this subrule must be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.

48.8(3) Immunity from liability. No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this rule or of Iowa Code chapter 508E.